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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

BOBBY BOLANDER,

Defendant and Appellant.

2d Crim. No. B266510
(Super. Ct. No. 2012019195)
(Ventura County)

Bobby Bolander appeals the order recalling his felony sentence, resentencing him to a misdemeanor, and placing him on misdemeanor parole for one year pursuant to Penal Code¹ section 1170.18, which was enacted by Proposition 47. Appellant contends the trial court erred in placing him on misdemeanor parole because he had completed his felony sentence and was on Post Release Community Supervision (PRCS) when he sought relief under Proposition 47. He alternatively contends the court erred in refusing to deduct his excess custody credits from his term of misdemeanor parole. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In January 2013, appellant pled guilty to felony possession a controlled substance (Health & Saf. Code, § 11350, subd. (a)) and the misdemeanor offense of

¹ All statutory references are to the Penal Code unless otherwise stated.

disobeying a court order (§ 166, subd. (a)(1)). The court sentenced him to two years in state prison and awarded 557 days of presentence custody credit.

In July 2013, appellant was released from prison and placed on PRCS. In June 2015, he filed a petition for resentencing pursuant to section 1170.18. The petition alleged that appellant was currently in jail but had "completed his custody sentence" and was on PRCS. The court recalled appellant's sentence, resentenced him to a misdemeanor, and placed him on one year of supervised misdemeanor parole in accordance with subdivision (d) of section 1170.18. The court rejected appellant's claim that he was not subject to misdemeanor parole and declined his request to apply his excess custody credits against the term of parole. Appellant's PRCS was terminated.

DISCUSSION

Appellant contends the court erred in placing him on misdemeanor parole after resentencing him under Proposition 47 because he had been released from prison and placed on PRCS. Alternatively, he claims he is entitled to have his excess custody credits applied against his term of misdemeanor parole. Neither claim has merit.

Proposition 47 reclassified certain drug- and theft-related offenses from felonies or "wobblers" to misdemeanors. (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091-1092.) Section 1170.18 allows those convicted of a reclassified offense prior to November 5, 2014, to petition for a reduction of their conviction from a felony to a misdemeanor. A person "currently serving a sentence" for a reclassified offense may petition to have his or her sentence recalled and be resentenced to a misdemeanor (§ 1170.18, subds. (a) & (b)), while one who has "completed his or her sentence" for such an offense may apply to have the conviction designated as a misdemeanor (§ 1170.18, subd. (f)). A person resentenced to a misdemeanor under subdivision (b) is "given credit for time served" and is "subject to parole for one year following completion of his or her sentence." (§ 1170.18, subd. (d).)

Appellant asserts that the court erroneously placed him on misdemeanor parole after resentencing him to a misdemeanor because he had already "completed his

. . . sentence" for the reclassified offense. We disagree. Appellant had not yet completed his sentence when he was released from prison and placed on PRCS because PRCS was part of his felony sentence. A period of parole or PRCS "constitutes part of the punishment for the underlying crime." (*People v. Nuckles* (2013) 56 Cal.4th 601, 608.) Parole supervision or PRCS is, with exceptions not relevant here, a mandatory feature of every "sentence resulting in imprisonment in the state prison" (*Id.* at p. 609, quoting § 3000, subd. (a)(1).) We presume that the voters who enacted Proposition 47 were aware of this statutory requirement. (See, e.g., *People v. Superior Court (Cervantes)* (2014) 225 Cal.App.4th 1007, 1015 [voters enacting Proposition 36 are deemed to have been aware of existing statutes].) We accordingly presume that the voters intended subdivisions (a) and (f)'s felony "sentence" to include a prison term and a period of parole or PRCS. Because appellant had not completed his PRCS term when he petitioned for relief under Proposition 47, he had not completed his sentence. (*People v. Nuckles, supra*, at p. 609.) The court thus properly resentenced him under subdivision (b) of section 1170.18, rather than subdivision (f), and correctly placed him on misdemeanor parole in accordance with subdivision (d).

We also reject appellant's alternative claim that the court erred in refusing to deduct his excess custody credits from his one-year term of misdemeanor parole.² Section 1170.18, subdivision (d) plainly and unambiguously provides that "[a] person who is resentenced . . . shall be given credit for time served and shall be subject to parole for one year following completion of his or her sentence, unless the court, in its discretion . . . releases the person from parole." The phrase, "shall be given credit for time served and shall be subject to parole for one year," indicates that, irrespective of the amount of credit for time served on the felony offense before it was reduced to a misdemeanor, the

² This issue is before the California Supreme Court in *People v. Morales*, No. S228030, review granted Aug. 26, 2015. The Supreme Court has granted review in two cases decided by this court that involve the same issue: *People v. McCoy*, No. S229296, review granted Oct. 14, 2015; and *People v. Hickman*, No. S227964, review granted Aug. 26, 2015.

petitioner shall be subject to parole for one year. (*Ibid.*) Otherwise, the phrase would read, "shall be given credit for time served and shall be subject to parole for one year unless credit for time served reduces the one-year parole period." The statutory language makes clear that the only exception to the one-year parole requirement is if the court releases the person from that requirement in the exercise of its discretion. "[T]he existence of specific exceptions does not imply that others exist. The proper rule of statutory construction is that the statement of limited exceptions excludes others, and therefore the judiciary has no power to add additional exceptions; the enumeration of specific exceptions precludes implying others." [Citation.]" (*In re James H.* (2007) 154 Cal.App.4th 1078, 1083-1084; see also *Building Profit Corp. v. Mortgage & Realty Trust* (1995) 36 Cal.App.4th 683, 689 ["When a statute contains an exception to a general rule laid down therein, that exception is strictly construed . . . [and] [o]ther exceptions are necessarily excluded"].)

If the language of section 1170.18, subdivision (d), were ambiguous, the ambiguity would be cured by the Legislative Analyst's comments in the official ballot pamphlet. The Legislative Analyst informed the voters: "Offenders who are resentenced would be required to be on state parole for one year, unless the judge chooses to remove that requirement." (Voter Information Guide, Gen. Elec. (Nov. 4, 2014), Prop. 47, Analysis by Legislative Analyst, p. 36.) Any voter who read this statement would have assumed that a one-year period of parole is mandatory unless the judge reduces or eliminates it. "The Legislative Analyst's comments, like other materials presented to the voters, 'may be helpful but are not conclusive in determining the probable meaning of initiative language.' [Citation.] Thus, when other statements in the election materials contradict the Legislative Analyst's comments we do not automatically assume that the latter accurately reflects the voters' understanding. [Citation.]" (*San Francisco Taxpayers Assn. v. Board of Supervisors* (1992) 2 Cal.4th 571, 580.) Nothing in the election materials for Proposition 47 contradicts the Legislative Analyst's conclusion that a person resentenced to a misdemeanor "would be required to be on state parole for one

year." This is the only statement in the election materials concerning the one-year misdemeanor parole period. (See *People v. Superior Court (Henkel)* (2002) 98 Cal.App.4th 78, 82 [Legislative Analyst's comment "eliminates doubt" as to correct interpretation of ballot proposition].) Accordingly, the court correctly refused to apply appellant's excess custody credits to reduce his one-year term of misdemeanor parole.

The order recalling appellant's felony sentence, resentencing him to a misdemeanor, and placing him on misdemeanor parole for one year is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Donald D. Coleman, Judge
Superior Court County of Ventura

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